

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/749,431	Applicant(s) GROVE ET AL.	
	Examiner MARK FADOK	Art Unit 3625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/Mark Fadok/
Primary Examiner, Art Unit 3625

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that McBrayer does not teach "including publishing the answer on the listing for the item". To further clarify, the examiner directs the applicant's attention to McBrayer, col 13, lines 9-16 and FIGs 23 and 24. Item 550 on FIG 23 which clearly teaches that the question and answers are "published in association with the listing".

Applicant may argue that the questions and answers are not printed directly on one listing webpage and there needs to be access to another web page from the main page in order to access the questions and answers. The examiner notes that the phrase "publishing questions and answers on the listing" is only provided in the decision aspect of applicant's invention (Applicant's PG Pub to the instant application 20050015325 para 0123 and FIG 9, item 924) and that the actionable portion of the description (FIG 9, item 930 denotes that the listing is "published in association with the listing" (see also Applicant's PG Pub to the instant application 20050015325 para 0123) or "within a listing" (Applicant's PG Pub to the instant application 20050015325 para abstract)). Further applicant's specification does not particularly point out that "on the listing" would necessarily connote that the answer needs to be displayed on a particular single page. The examiner notes that it is a common convention to place links to other related pages from a main page in a listing when too much information is available, thus creating a less cluttered presentation of the listing.

Applicant argues the examiner's use of Official Notice and asks for evidentiary support. To accommodate this request the examiner provided the following references.

Dvir para 0040 teaches that "Under no circumstances will the Auctioneer release any Supplier information without the permission of the Supplier", and Shavit col 14, lines 57-62 "Additionally, the system can produce either reports or answers to inquiries at the buyer's request, subject to approval of the information provider, on a wide selection of information about its orders, shipments, invoices, outstanding loads, usage of various items, etc."

Applicant argues that In re Einstein lends no support to the rejection of the instant claims, because nowhere in McBrayer is the buyer and seller described as "working parts" of any device." The examiner finds applicant's arguments persuasive, therefore this rejection will be removed from the next Office Action.

The examiner recognizes applicant's statement that the previous rejection incorrectly noted that applicant argued that the independent claims were not addressed and that Applicant's response actually stated that the rejections of "dependent claims 18-27 and 29-34 were not supported". This issue appears to be moot as the examiner has provided a detailed mapping of the dependent claims in the previous Office Action and applicant has not restated the argument in the after final response dated 5/17/2010..

Continuation of 13. Other: See PTO 892 for listing of references in response to request to support Official Notice.